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UNITED STATES DISTRICT COURT
Southern District of New York X
CARL D. WELLS

Petitioner, Motion To
Vacate Judgment
[F.R.C.P. 60(b)(6)]

VS.

Supt. Mark Miller 21-cv-11231 (CJL)

Respondent. (L. J. Limon, NYSJ)

-----X
Respectfully:

CARL D. WELLS, declares
under penalty of perjury that the
foregoing is true and correct to the
best of my knowledge.

1. This is a motion to Vacate Judgment
Entered: DATED: 3/27/23, MADE
Pursuant to, (Fed. R. Civ. P. Rule 60(b)(6)).
The Reason for such Request is as
follows: A). Appellate Counsel and
Agency, (O.B.D.), has Denied This -

[Fed. R. Cr. P. 60(b)]

- Appellants, petitioners, Effective Assistance of Appellate Counsel, By claiming that they can perfect said appeal without submitted trial transcripts, also; for failure to attempt to secure documents even after a court order deadline was entered, moreover, the agency has been defective and negligent since (2009) for some reasons, A). Lack of work, B). Negligence.

[See: Prose client's 6-yr delay from (2009), People v. Zuniga (1st Dep), cited in, Zuniga v. Llanos, Slip Op (2013), 149 A.D.3d at 66.].

THE petitioner is requesting an extraordinary hearing to develop the record, also to verify the truth concerning Appellable Record. Also, to produce, [N.Y. Times Article, 4/16/2010], concerning (O.A.D.), delayed appeals, to produce, testimony by petitioner concerning his 2009/2010, Communications in behalf -

[Fed. R. Civ. p. 60(b)]

- OF MR. ZUNIGA'S, (O.A.D.) Appellate
Counsel, As A Fast Lane Lawyer, And
Attempting To Secure 'Transcripts'
After A 6-YR Delay of perfection.
Moreover, As A Hearing, To produce,
The Complaint / Exhibits From, Wells
V. City of N.Y., 15-cv-6585 (Ap),
As The (O.A.D.) IS Litigated All
Through This Complaint / Exhibits, Also,
As A Hearing, produce, "Clerk For
Appellate Litigation", Robert Deary Esq.
(2015), Appellate Briefs, by, Cassandra
S. Trapp, Esq. And, (pro-se)
Supplemental Briefs, Response Brief
By, pro-se, Petitioner, [Dkt # 0041/07,
6548/06], N.Y. County, 1st Judicial
Dept. 2015. As, The (O.A.D.) IS
Listed Inside of pro-se Supplemental
Brief, And, MR. Zuniga. As A
Hearing, IT will be Requested That
This Court Question The Judges who
Assigned, O.A.D. To The petitioner?
3.

[Fed. R. Civ. p. 60(b)]

2. Since, Appellate Counsel is, ~~in fact~~, ineffective as an Agency, with a history of some delay, well before COVID-19, "extraordinary circumstances" should be used to excuse exhaustion, pursuant to, delay and speedy trial issues. (See: Nickels v. Conway, 480 Fed. Appx. 54 (2012); also see: Cotnam v. Thompson, ~~501 U.S. 722~~, 501 U.S. 722, THE PETITIONER has been denied, the process, ~~procedural~~ the process also, Clover v. Owens, 6, 14).

3. THE Respondents Cannot Show, "Due Diligence", "A Trial Transcript may not be excluded for delay, as the delay was a result of the states error" Dobbs v. Zano, 506 U.S. 357 113 S.Ct. 835 (1993). Smead in front Federal Department, and for (O.A.D.)? A Hearing is Required.

[Fed. R. Cr. P. 60 (b)]

4. THE Respondent And (O.D.B.)

Letters Are Vague. This person
has been Subject to 'Hearsay', which
Concerns Last Files, Boxes, Since
2011, On Appeal, And Between, 2015
Thru 2019, Trial Court, Without Any
Verification, Evidence & Proof Presented,
On The Record, To establish IF The
Delay Is Valid, Based upon The
Truth OF The Matter Assessed?
"Whether A Hearing, In This Court Is
Required, Is (A). Whether Some Error
You Are Responsible For prevented The
development of The Facts? (B). Whether
The State's error prevented The
Factual Development? As it stands,
This Court make A determination
Without A Complete Record, And With-
out Any Verification That This person
Can have An Adequate Appeal Review
Of Appellate Record From Lower Court?

[Fed.R.Civ.p. 60(b)]

5. Next, Since The Files, Delay Etc.,
were Missing Since 2011-Then 2015,
2015 Then 2019, And ~~just~~ pending The
perfection of Sam Appeal. Reishay
is That, Files Still are missing?
Now, 2019, included?

6. Concerning Exhaustion, The Appellate
Division did Review 440 on Appeal,
And That is Satisfactory as to the Corps.
Therefore, Review is not Required to
be Exhausted, is it? The missing
files for that, motions, TRAC Corpus
etc. The Direct Appeal, Yes, it is
Requested That The Court Reviews The
440 motion, on its merits, without
order, And Before The Record They
Claim Etc., After A Hearing to
Verify if That be True?

7. Once Again, I Claim That is
Fundamental MisCarriage of Justice -
6.

[Fed.R. Civ. P. 60(b)]

- Has Taken place And I Ask That
This Court Review All That exists due
to extraordinary circumstances And
Unanswered Questions Concerning The
Continued / Claimed Lost Files, Plans
Copies Etc. All of which is delaying
This prisoner, The process And procedure
The process, Including, The Equal
Protection Clause of The United States
Constitution. (See Keeney v. Thompson -
Reyes, 504 U.S. 1, 6 (1992).

Moreover, The Ineffective Assistance of
Counsel Claims Are Exhausted For This
Court Review, Arts 440, Murray v.
Carrier, 477 U.S. 478, 488, An Additional
Hearing on This Issue is Requested
THE "Cause And Prejudice" Test Has
been met / Shown, Wainwright v. Sykes
433 U.S. 72 (1977)

8. IT IS ALSO Requested That The
Issue of, Lack of Subject -
7.

[Fed. R. Cr. P. 60(b)]

Jurisdiction Be Reviewed on The Merits, In An Evidentiary Hearing Concerning, (A). Testimony Be Regarding Bronx County Office And Evidence Obtained At A 2019 Trial, After It (2013) High Court Suppression, And Disposal of Entire Case With Prejudice, 21 NY3d 716, pro v. wells, Lower Court Dismissed.

(B). Illegal Release, Detention From, State Custody, July 24th, 2015, Into Rikers Island City Custody?

A Hearing Is Requested on This Issue, To Develop The Record.

Moreover, It Is Requested That A Standby Counsel Be Appointed To Assist pro se petitioner at Any Hearing.

Dated: 4/6/23.

Carl B. Wells
Carl B. Wells

I, Carl B. Wells, declare under penalty of perjury that the foregoing is true & correct. 28 USC 1746. Witness
8.

1:21 W 1231

DECLARATION OF SERVICE

State of New York }
County of Rockers } ss

Carol D Wells, declares under
penalty of perjury that:

I. I am located at, 594 Rt 216,
Stormville, NY 12582, Green Hoes C.S.
I am the prose petitioner, and I
am requesting that, state court to
the Below Under party, by stating
from the following Motion to Unseal
Judgment. Request For Evidentiary Hear-
ing, [Fed.R.Cv.P. 60(b)], On:

- (1) Office of the Attorney General,
Assistant (AG) State of New York
Paul B. Lyons, 28 Liberty St, NY
NY 10005.

I, Carol D Wells, declare
under penalty of perjury that the
 foregoing is true & correct. 28 Nov 1746
Carol Wells
Carol Wells, 9

GREEN HAVEN CORRECTIONAL FACILITY

P.O. BOX 4000

STORMVILLE, NEW YORK 12582-4000

NAME: Carol White DIN: 114747

LB-5-267

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